

Panaji, 28th April, 2008 (Vaisakha 8, 1930)

SERIES II No. 4



OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

No. 2

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/18/2007-LAB/1279

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 14-11-2007 in reference No. IT/52/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 12th December, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI-GOA

(Before Dilip K. Gaikwad, Presiding Officer)

Ref. No.: IT/52/2000

Workmen,
The General Secretary,
Gomantak Mazdoor Sangh,
Ponda-Goa.

... Workman/Party I

V/s

M/s. Cham Ocean Treasurers Co. Ltd.,
Orgao,
Marcella-Goa.

... Employer/Party II

Party I/Workmen are represented by P. Gaonker.

Party II/ Employer is represented by K. V. Nadkarni.

AWARD

(Passed on this 14th day of November, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts of the reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under Order dated 18-7-2000, has referred to this Industrial Tribunal following dispute for adjudication:-

- (1) (i) Whether the action of the management of M/s. Cham Ocean Treasurers Co. Ltd., Orgao-Marcella, Goa in laying off their workmen, with effect from 15-2-1999 to 5-8-1999, is legal and justified?
- (ii) If not, to what relief the workmen are entitled ?
- (2) (i) Whether the action of the management of M/s. Cham Ocean Treasurers Co. Ltd., in terminating the services of the following 14 workmen with effect from 6-8-1999, is legal and justified?

- | | |
|----------------------------|-----------------------------|
| 1. Shri Gopal Krishna. | 2. Shri Praveen B. |
| 3. Shri Kasim Patel. | 4. Shri Ambanna B. |
| 5. Shri Tammanna D. | 6. Shri Rambhavan Singh. |
| 7. Shri Kamalesh Singh. | 8. Shri Chotelal Singh. |
| 9. Shri Prakashana Pillai. | 10. Shri Purushottam Gowda. |
| 11. Shri Raghu Priolkar. | 12. Shri Ashok Priolkar. |
| 13. Shri B. Jagadish. | 14. Shri Udaykumar. |

- (ii) If not, to what relief the above workmen are entitled ?

2. In response to notices both parties put their appearance in this Industrial Tribunal. Representative

of Party I/Workmen, who is General Secretary of Gomantak Mazdoor Sangh presented claim statement for and on behalf of the Party I/Workmen on 29-8-2000 at Exb. 3. Party II filed its written statement on 7-12-2000 at Exb. 5. Representative of the Party I/Workmen submitted rejoinder on 1-1-2001 at Exb. 6. On basis of pleadings of both parties the then Learned Presiding Officer framed issues on 5-2-2001 at Exb. 7. The Party I/Workman examined Gopal Shetye at Exb. 15, Pravin Gauda at Exb. 17 and Kasim Patel at Exb. 18. Thereafter, both parties filed terms of settlement on 23-3-2005 at Exb. 19. These Terms of Settlement are signed by General Manager of Party II and by representative of the Party I/Workmen, and also by the Workmen who are at serial Nos. 1, 2, 3, 10, and 13 in the claim statement. Representatives of both parties admitted that the contents in the Terms of Settlement are correct.

3. It appears from the Terms of Settlement (Exb. 19) that the workmen who are at serial Nos. 1, 3, 4, 5, 7, 8, 9, 10, 11 and 12 are agreed to be treated as retrenched with effect from 6-8-99 and that they will be paid notice pay, retrenchment compensation, salary and all other dues as shown in Annexure A, that the workmen who is at serial No. 2 has tendered his resignation on 1-6-1999 and collected legal dues on 17-6-1999, that he will not be paid any wages as notice pay and that he will be paid retrenchment compensation and other dues as shown in Annexure A, that the workman who is at serial No. 6 expired long back, that the company, that is the Party II, agreed to pay to legal heirs/dependents, of the deceased Workman, legal dues as shown in Annexure A as and when the legal heirs/dependents approach management of the Party II, that the Party I union agreed to drop claim in respect of the workman Uday Kumar who is at serial No. 14 as the Workman of this name was not employed in establishment of the Party II and that management of Party II agreed to pay each of the workmen under account payee cheques as shown in Annexure A in full and final settlement of all the claim including earned wages, bonus, leave encashment, one month's notice pay, retrenchment compensation etc., arising out of employment/termination and claims arising out of reference. It is further agreed between the parties that the Party I/Workmen shall accept the said amounts mentioned in 'Annexure' A, attached to the settlement in full and final settlement of all their claims arising out of their employment and shall acknowledge the said amount by way of receipt duly signed by each of the Workmen. The Party I/Workmen have confirmed that no further benefits which can be computed in terms of money are due and payable to them by the Party II, and that, the settlement shall satisfy all their claims including the claim under the present reference.

4. Today representative of both parties filed pursis at Exb. 20 stating that the workman, B. Jagadish who is at serial No. 13 in claim statement has received cheque towards full and final settlement of his claim including unpaid wages, if any, bonus, leave encash-

ment, overtime, notice pay, retrenchment compensation etc., arising out of his employment/termination, and that, he has no claim of whatsoever nature which can be computed in terms of money including the claim of reinstatement and of re-employment.

Thus from the above terms of settlement (Exb. 19) and the pursis Exb. 20, it becomes apparent that the disputes which are referred for adjudication do not survive. It is not necessary to pass award in terms of settlement as prayed for in the terms of settlement. With this, I proceed to adjudicate the disputes by passing order as follows:

ORDER

- 1) It is hereby adjudicated that the dispute whether the action of the management of M/s. Cham Ocean Treasurers Co. Ltd. Orgao-Marcella-Goa. (Party-II) in laying of their Workmen with effect from 15-2-1999 to 5-8-1999 is legal and justified, does not survive.
- 2) It is hereby adjudicated that the dispute whether the action of the management of M/s. Cham Ocean Treasurers Co. Ltd. in terminating services of the following 14 Workmen with effect from 6-8-1999, is legal and justified, does not survive.

- | | |
|----------------------------|-----------------------------|
| 1. Shri Gopal Krishna. | 2. Shri Praveen B. |
| 3. Shri Kasim Patel. | 4. Shri Ambanna B. |
| 5. Shri Tammanna D. | 6. Shri Rambhavan Singh. |
| 7. Shri Kamalesh Singh. | 8. Shri Chotelal Singh. |
| 9. Shri Prakashana Pillai. | 10. Shri Purushottam Gowda. |
| 11. Shri Raghu Priolkar. | 12. Shri Ashok Priolkar. |
| 13. Shri B. Jagadish. | 14. Shri Udaykumar. |

- 3) The dispute, to what relief the above workmen are entitled, does not survive.
- 4) No order as to cost.
- 5) The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

Notification

No. 28/18/2007-LAB/1276

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 14-11-2007 in reference No. IT/17/2006 is hereby published as required by

section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 12th December, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI-GOA

(Before Dilip K. Gaikwad, Presiding Officer)

Ref. No.: IT/17/06

Gajanan S. Naik,
H. No. 79, Naikwada,
Mandrem-Goa.

... Workman/Party I

V/s

M/s. Print-o-Graphics,
1st Floor, Shriji Complex,
Behind EDC House,
Panaji-Goa.

... Employer/Party II

Party I/Workman is represented by Subhash Naik.

Party II/Employer - Ex-parte.

AWARD

(Passed on this 14th day of November, 2007)

This is a reference under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts of the reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(c) of the said Act, 1947, under Order dated 8-3-2006, has referred to the Labour Court-II following dispute for adjudication:-

- a) Whether the action of the management of M/s. Print-o-Graphics, 1st Floor, Shriji Complex, Panaji-Goa in terminating the services of their workman, Shri Gajanan S. Naik, Offset Printer, with effect from 1-7-2004, is legal and justified?
- b) If not, to what relief the workman is entitled to?

2. In response to notice the Party I put his appearance. He presented claim statement on 16-6-2006 at Exb. 3. It appears from claim statement that the Party II is a Printing Press dealing with business of manufacturing colour printing materials on Offset Press and of screen Printing. The Party I was appointed as Offset Printer in establishment of Party II with effect from 9-12-2002, on consolidated salary Rs. 5,000 per month. The Party II refused employment to the Party I with effect from 1st June, 2004. The Party I raised Industrial Dispute before Labour Commissioner of Government of Goa. The

Party II did not appear in conciliation proceedings held by the Assistant Labour Commissioner. The conciliation proceedings ended in failure. Therefore, the Government of Goa under its Order dated, 8-3-2006 referred the dispute to the Labour Court-II for adjudication as stated earlier.

3. By presenting the claim statement the Party I has prayed for holding action of the Party II in refusing employment to him with effect from 1-7-2004 as illegal and unjustified and for reinstatement in service with full back wages and with continuity in service.

4. The Party II is served with notice which was sent by registered post A. D. The acknowledgment is at Exb. 4. The Party II did not appear as a result the Party II is set ex-parte.

5. The Party I in support of its claim filed its own affidavit at Exb. 7. He has produced documents, 3 in number, alongwith list Exb. 8. The documents which are at serial No. 1 and 2 are certificates dated, 28-6-2003 and 30-3-2004, respectively, issued by proprietor of Party II, while remaining document is copy of failure report submitted by the then Assistant Labour Commissioner and Conciliation Officer to the Secretary (Labour) Government of Goa.

6. Claim made out by Party I in his claim statement (Exb. 3) is supported by his affidavit and by the documents produced alongwith list Exb. 8. Net result which immerges from claim statement supported by the affidavit together with documents is that the Party I was working as Offset Printer in establishment of Party II with effect from 9-12-2002 and that by way of refusing employment the Party II terminated services of Party I with effect from 1st July 2004 without giving to the Party I one month's notice indicating reasons for retrenchment or without making payment to the Party I in lieu of such notice, of wages for the period of the notice and of retrenchment compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof, in excess of six months. In other words the conditions which are precedent to retrenchment of workman and which are provided in Section 25(F) of said Act, 1947 are not complied with by the Party II.

7. Evidence of the Party I and which is in the shape of affidavit is not challenged by the Party II. In view of this reason and above discussion I accept evidence led by the Party I and proceed to adjudicate the dispute by passing order as follows:

ORDER

- 1) It is hereby adjudicated that the action of the management of M/s. Print-O-Graphics, Panaji-Goa, in terminating the services of their workman Shri Gajanan S. Naik, Offset Printer, (Party I), with effect from 1-7-2004 is illegal and unjustified.

- 2) The Party I is entitled to reinstatement in service in establishment of Party II, with full back wages and with continuity in the service.
- 3) No order as to cost.
- 4) The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Dispute Act, 1947.

Sd/-
Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

Notification

No. 28/18/2007-LAB/1277

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 13-11-2007 in reference No. IT/22/2006 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 12th December, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI-GOA

(Before Dilip K. Gaikwad, Presiding Officer)

Ref. No.: IT/22/06

Venkatraman P. R. Thoraliopathy,
C/o, Sitaram T. Gawar,
H. No. 426, Virlosa, Britona,
Bardez-Goa.

... Workman/Party I

V/s

M/s. Sai Service Station Ltd.,
36/1, Alto Porvorim,
Bardez-Goa.

... Employer/Party II

Party I/Workmen appeared through Mrs. D. Venkatraman.

Party II/Employer is represented by Adv. P. J. Kamat.

AWARD

(Passed on this 13th day of November, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts of the reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under Order dated 12-6-2006 has referred to the Labour Court-II following dispute for adjudication:-

- a) Whether the action of the management of M/s. Sai Service Station Limited, Alto Porvorim, Goa, in dismissing Shri Venkatraman P. R. Thoraliopathy, Accounts Assistant, from service with effect from 28-5-2005 is legal and justified?
- b) If not, to what relief the workman is entitled?

2. The Party I workman is served with notice which was sent by R. P. A. D. He appeared through Mrs. D. Venkatraman. This is apparent from Roznama dated 8-8-2006. He did not file claim statement. Learned Advocate representing the Party II filed purses at Exb. 2 stating that, as the Party I did not file claim statement, the Party II does not desire to file written statement.

3. Heard Learned Advocate of Party II.

4. The proceedings before the Industrial Tribunal or Labour Court are Judicial in nature even though the Indian Evidence Act, does not apply to the proceedings but principle underlying the said Act is applicable to the proceedings before the Industrial Court. It is well settled that if a Party challenging the legality of an order, burden lies upon him to prove illegality of the order and if no evidence is produced the Party invoking jurisdiction of the court must fail. In this case the Government of Goa has referred dispute to the Labour Court II at the instance of the aggrieved workman, that is, the Party I. Burden lies on the Party I to set out grounds challenging the validity of termination order and to prove that the termination order is illegal. The Party I neither filed claim statement nor produced evidence, with the result that there is no material before this court for recording a finding that the order of termination passed by the Party II/Employer is illegal or unjustified. In absence of evidence, the court has no jurisdiction to hold the order of termination illegal. With this, I proceed to adjudicate the dispute by passing order as follows:

ORDER

- 1) It is hereby adjudicated that the action of the management of M/s. Sai Service Station Limited, Alto Porvorim, Goa, in dismissing Shri Venkatraman P. R. Thoraliopathy, Accounts Assistant, from service with effect from 28-5-2005 is legal and justified.
- 2) It is hereby adjudicated that the Party I/Workman is not entitled to any relief.
- 3) No order as to cost.

- 4) The Award be submitted to Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

Notification

No. 28/18/2007-LAB/1278

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 01-11-2007 in reference No. IT/22/2007 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
Hanumant T. Toraskar, Under Secretary (Labour).
Porvorim, 12th December, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI-GOA

(Before Dilip K. Gaikwad, Presiding Officer)

Ref. No.: IT/22/2007

Joseph S. Fernandes,
H. No. 194/3, Parra,
Batti, Bardez-Goa..

... Workman/Party I

V/s

M/s. Colfax (India) P. Ltd.,
Nirancal Road,
Curti, Ponda-Goa.

... Employer/Party II

Workman/Party I is represented by P. Gaonker.

Employer/Party II is represented by Adv. S. N. Singbal.

AWARD

(Passed on this 1st day of November, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts of the present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under Order dated 14-5-2007 has referred to this Industrial Tribunal following dispute for adjudication.

- (i) Whether the action of the management of M/s. Colfax (India) Private Limited, Curti, Ponda-Goa, in terminating the services of its workman Shri Joseph S. Fernandes, A-C Mechanic with effect from 31-1-2006 is legal and justified?

- (ii) If not, what relief the workman is entitled?

2. In response to notices both parties put their appearance in this Industrial Tribunal. The Party I by filing application at Exb. 8 stated that he is not interested in the reference, and that, he is not filing claim statement. He requested for permission to withdraw the reference. Learned Advocate of Party II has no objection.

3. It reveals that the dispute is referred by the Government of Goa for adjudication to this Industrial Tribunal at the instance of Party I/Workman. Therefore permission cannot be granted to withdraw the reference. Dispute under the reference will have to be adjudicated. It was bounden duty of the Party I/Workman to file claim statement and to lead evidence to prove that action taken by the Party II in terminating his services with effect from 31-1-2006 is illegal and unjustified. He did not lead evidence, as a result, the dispute will have to be adjudicated against him. With this, I proceed to pass the following order.

ORDER

1. It is hereby adjudicated that the action of the management M/s. Colfax (India) Pvt. Ltd., Curti, Ponda-Goa (Party II) in terminating the service of its workman Shri Joseph S. Fernandes, A-C Mechanic with effect from 31-1-2006 is legal and justified.
2. It is hereby adjudicated that the Party I/Workman is not entitled to any relief.
3. No order as to cost.
4. The award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

Notification

No. 28/18/2007-LAB/1275

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 16-11-2007 in reference No. IT/46/95 is hereby published as required by

Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 12th December, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Ref. No. IT/46/95

V. H. Fernandes,
144-A, Arrossim,
P. O. Cansaulim-Goa.

... Workman/Party I

V/s

M/s. U. P. State Bridge
Corporation Ltd.,
New Mandovi Bridge, Patto,
Panaji-Goa.

... Employer/Party II

Workman/Party I is represented by Adv. Suhas Naik.

Employer/Party II is represented by Adv. A.V. Nigalye.

AWARD

(Delivered on this 16th day of November, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts of present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under Order dated 7-9-1995, has referred to this Industrial Tribunal following disputes for adjudication;

(I) Whether the action of the management of M/s. U. P. State Bridge Corporation Ltd., Panaji Goa, in terminating the services of Shri V. H. Fernandes, Typist, w.e.f. 6-7-1992 is legal and justified?

(II) If not, to what relief, the workman is entitled?

2. In response to notices, both parties put their appearance in this Industrial Tribunal. The Party I presented his Claim Statement on 27-1-1995 at Exb. 3. It appears from the Claim Statement that the Party II is a construction Company. It has undertaken construction activities in various parts of the State of

Goa. The Party I was initially appointed as a Typist in establishment of the party II w.e.f. the month of April, 1987, on consolidated salary of Rs. 750/- p.m. He was posted in section office of party II and which was situated in Pundalik Nagar at Porvorim Goa. Thereafter, he was transferred to office known as 'Civil Stores' owned by the Party II and which was situated near the Patto Bridge at Panaji. Since after his transfer to the office known as Civil Stores, he was put on daily wages @ Rs. 25/-. In pursuance of direction given by the Party II, he started to operate the Telex Machine from the month of September 1998. The Party II was paying to him Rs. 100/- p.m. as telex operating allowance. The Party II stopped the payment of telex operating allowance from the month of December, 1991. Therefore, the Party I approached office of the Labour Commissioner with a request to direct the Party II to pay the telex operating allowance. The Party II by sending letter on 25-5-92, informed the Labour Commissioner that it is not liable to pay such allowance. The Party II made him to work even on Sundays and Holidays without giving compensatory offs. Due to his sickness, he could not attend his duties only for few days. When he went to attend his duties on 6-7-92, the Party II refused him employment. Therefore, he raised dispute before the Labour Commissioner. It was stand of the Party II before the Labour Commissioner that he did not report to his duties for 13 days as a result it was deemed that he has left services as per the standing orders. Conciliation proceedings held by the Labour Commissioner ended in failure. Therefore, the Government of Goa has referred the disputes to this Industrial Tribunal for adjudication as stated earlier.

3. By presenting the Claim Statement, the Party I asserted that the Party II terminated his services without holding departmental inquiry and also without making compliance with provision contained in Sec. 25(FFF) of the said Act, 1947. Termination of his services by the Party II is bad in law. Therefore, he has prayed for reinstatement in service with full back wages and with continuity of service.

4. The Party II filed its Written Statement on 12-3-96 at Exb. 4. It appears from the written statement that, it is a case of abandonment of services and not of termination of services. The Party I never raised demand before the Party II. There is no industrial disputes between the parties. Therefore, the reference is neither maintainable nor this Industrial Tribunal has jurisdiction to try and to entertain the reference. The Party I was employed as temporary workman in establishment of the Party II on daily wages during construction of new Mandovi Bridge. The Party I was getting daily wages @ Rs. 25/- from 27-4-87, @ Rs. 30/- from the month of May, 1991 and as per settlement dated 22-12-91 @ Rs. 38/-. To operate telex machine by the Party I was part of his normal duty. Even then, he was paid with additional allowance for the period during which he was operating the telex machine. He was not regular in attending his duties. He was reprimanded for his behaviour and performance during

period of his employment. He is covered by standing orders of the Party II. As per clause L-2-12 of the standing orders, if an employee remains absent for more than 13 consecutive days without leave, or without getting leave sanctioned, he shall be deemed to have left services. The Party I remained absent for more than 13 consecutive days without leave. Therefore, it is deemed that he has left the services. To remain absent from duty without intimation or leave is not a misconduct under certified standing orders. It was not necessary to hold departmental inquiry against the Party I. Construction of new Mandovi Bridge was completed by the end of June, 1992. All workmen who were appointed on daily wages are relieved from services during period from August, 1992 to October, 1992. Therefore, the Party II has entreated for rejection of the reference.

5. The Party I submitted Rejoinder on 11-6-96 at Exb. 5. All contentions which are raised by the Party II in its written statement and which are adverse to his interest are denied by him by way of filing the Rejoinder.

6. On basis of pleadings, the then learned Presiding Officer framed issues on 1-7-96 at Exb. 6. The issues are re-cast by me on 12-11-07 at Exb. 18. The parties did not lead additional evidence after re-casting of the issues which are as follows:

1. Whether reference is maintainable ?
2. Does the Party I prove that the Party II terminated his services with effect from 6-7-92 ?
3. Whether termination of services of Party I by the Party II is legal and justified ?
4. Whether this Industrial Tribunal has jurisdiction to try and to decide the reference ?
5. To what relief the Party I is entitled ?
6. What Award ?

7. My finding on the above issues are as follows.

1. In the affirmative
2. In the affirmative
3. In the negative
4. In the affirmative
5. Only to compensation u/s 25-FFF of the said Act, 1947.
6. As per final order.

REASONS

8. *Issue No. 1:* The Government of Goa under order dated 7-9-95 has made the present reference to this Industrial Tribunal on ground that industrial dispute in respect of termination of services of the Party I exist between parties. Learned advocate of the Party II

challenged maintainability of the reference on two grounds: (1) since it is a case of abandonment of service by Party I and not of termination of service of Party I, there is no industrial dispute between parties and (2) the Party I without raising dispute with management of the Party II sent request to the Labour Commissioner which amounts to only a demand by the Party I and not to an industrial dispute between the parties.

9. The Party II is a construction company which had undertaken construction activities in various parts of the State of Goa. The Party I was appointed as a typist in establishment of the Party II w.e.f. the month of April, 1987. He was working in office of the Party II and which was situated near the Patto Bridge at Panaji in the year 1992. He remained absent from his duties w.e.f. 6-7-92 without leave for more than 13 days. Therefore, the Party II deemed that the Party I has abandoned the services. This is on basis of clause L-2-12 of standing orders applicable to the parties. It is pertinent to note that the standing orders are not produced on record. In my view, the Party II was in a better position to produce the standing orders. Nothing such has been done by the Party II also.

10. It appears from clause L-2-12 of the standing orders and which is quoted in para 10 of the written statement that any workmen who remains absent from duty without leave or in excess of the period of leave originally sanctioned or subsequently extended for more than 13 consecutive days, he shall be deemed to have left the services of the Corporation on his own accord without notice thereby terminating his contract of services with the Corporation and his name will accordingly be struck off the rolls. The Hon'ble Supreme Court held in case of *D. K. Yadav, petitioner v/s J. M. A. Industries Ltd., respondent, reported in 1993 II CLR 116* and which is placed before me by learned advocate of the Party I that:

"the definition of retrenchment in sec. 2 (oo) is comprehensive one intended to cover any action of the management to put an end to the employment of an employee for any reason whatsoever."

11. Relying upon the above decision, I hold that action of the Party II under the said clause L-2-12 of the standing orders to put an end to the employment of Party I/employee for reasons stated therein certainly comes within the scope of definition of retrenchment provided under sec. 2(oo) of the said Act, 1947. So, even for the sake of arguments assuming that there is abandonment of service by the Party I, it cannot be said that there is no industrial dispute between the parties. I do not agree with argument advanced by learned advocate of the Party II.

12. Now coming to second ground raised by learned advocate of the Party II to challenge maintainability of the reference, he brought to my notice averments made in para 9 of the claim statement and admissions given by Party I on page 4 of his cross examination. It

appears from averments in para 9 of the claim statement that, after the Party II refused employment, the Party I raised an industrial dispute before the Labour Commissioner. Admissions given by him further show that he had raised only monetary claim and not a claim for reinstatement in the service. There is no mention in the written statement and it is also not pointed out by the Party I in his evidence that, before he raised dispute with the Labour Commissioner, he had approached management of the Party II with his demands. The Hon'ble Supreme court held in case of *Sindhu Resettlement Corporation Ltd., Appellant V. Industrial Tribunal of Gujarat and others, Respondents* reported in 1968 Lab I. C. 526, and which is placed before me by learned advocate of the Party II that:

"If no dispute at all is raised by the employees with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employee. An industrial dispute, as defined, must be a dispute between employers and employers, employers and workmen, and workmen and workmen. The Government has to come to an opinion that an industrial dispute does exist and that opinion can only be formed on the basis that there was a dispute between the employee and the employer."

13. There is no specific contention in the written statement that, the Party I before raising the dispute with the Labour Commissioner did not approach the management of the Party II with his demands. Only for this simple reason I hold that argument advanced by learned advocate of the Party II and which relates to the second ground can easily be dispelled. In case of *Sindhu Resettlement Corporation* alluded Supra, employees had raised a demand before the Government without raising dispute with the employer. Facts of this reported case are different from that of the present one. With respect, I am of the opinion that decision from this reported case will not be helpful to the learned advocate of the Party II to show that in the present case there is no industrial dispute. There is a xerox copy of letter dated 16-1-93 at Exb. W-1. The letter is addressed to Project Manager of the Party II as well as to the Labour Commissioner. The Party I by sending this letter raised demands with the Party II and the Labour Commissioner, for reinstatement in the service with full back wages and with continuity of service. There is no documentary evidence in the form of acknowledgment to show that the copy of this letter was received by the Project Manager of Party II. In this connection, reference of carbon copy of reply sent by the Project Manager of Party II is inevitable. The carbon copy which is at Exb. W-3 is addressed to the Assistant Labour Commissioner, Government of Goa. It is nowhere stated in this reply also that the Party II did not receive copy of letter dated 16-1-93 (W-1) as rightly pointed out by the learned advocate of Party I. It can presumably be said that the Party II has received either or copy of the letter dated 16-1-93. Under these

circumstances, arguments advanced by learned advocate of Party II that the Party I did not raise demands before the Party II does not hold water and as such it must fail.

14. Sec. 2(k) of the said Act, 1947 defines Industrial Disputes as follows:

"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

15. Dispute under present reference is between the Party I and the Party II who are employee and employer respectively. The dispute is connected with employment of the Party I. Where the retrenched employee has made demand for reinstatement with full backwages and with continuity of service, the reference made by the Government u/s 10(1)(d) is certainly competent. I, therefore, answer the issue in affirmative.

16. Issue No. 2:- The Party I examined himself at Exb. 10. It appears from his evidence that he worked in establishment of Party II till the month of July, 1992. Somewhere in the month of June, 1992, Party II brought a typist from Colvale bridge site to work in his place. Project Manager of the Party II told him that project of new Mandovi Bridge is complete. Pursuant to advice given by the Project Manager, he approached Junior Engineer, then to Assistant Manager and then to the Project Manager who in turn asked him to show documents of his employment with Party II. The Project Manager further told that work is not available for him and removed his table and chair. He was moving from pillar to post for about 4 to 5 days to collect record of his service.

17. The Party II examined its General Manager J. K. Pant at Exb. 11. According to him, the Party I attended his duties till 6-7-92. Thereafter, the Party I neither reported to his duty nor applied for leave. It was because the Party I was knowing that project of Mandovi Bridge is complete. The Party I sent his colleague and collected his dues including wages which were payable till the month of June, 1992. The Party I told him that he has secured job somewhere else.

18. It reveals from cross examination of Party I that he was suffering from sickness for a period of 12 days w.e.f. 7-7-92. Thereafter, when he went he was not allowed by the Party II to join his duties. There is no documentary evidence on his behalf to prove that the Party II terminated his services w.e.f. 7-7-92. Learned advocate of the Party II by referring evidence of J. K. Pant argued that if conduct of Party I is taken into consideration, it will clearly emerge that the Party I has abandoned the services at his own. Therefore, in

his opinion, case made out by the Party II can safely be accepted.

19. There is no evidence except interested words of J. K. Pant to support that the Party I by sending his colleague collected his dues including wages which were payable till the month of June, 1992, that the Party I left the services as the Party I was knowing that the project of now Mandovi Bridge is complete, and that, the Party I told this witness that he secured a job somewhere else. No such case has been made out by way of putting suggestions to the Party I in his cross examination. Under these circumstances, it will not be correct to rely upon evidence of this witness and which, according to the learned advocate of the Party II, is throwing lights on the conduct of the Party I.

20. Evidence led by the parties is word against word. In case of *Gangaram K. Medekar Petitioner v/s Zenith Safe Manufacturing & Others, Respondents, reported in 1996 CLR 172*, and which is placed before me by learned advocate of Party I, according to the petitioner-workman, his service was orally terminated. It was case of the respondent-employer that the petitioner-workman voluntarily abandoned his service. The Hon'ble High Court of Bombay held in this reported case that even assuming that the evidence is word against word, yet the benefit in such circumstances must go to the workman because the company has to prove clearly the case of voluntarily abandonment which the company has failed to prove. In the present case also, there is no sufficient and convincing evidence on behalf of the Party II to conclude that the Party I has abandoned his service. Therefore, and relying upon the decision given by the Hon'ble High Court of Bombay, I hold that since evidence led by the parties is word against word, benefit must go to the Party I-workman.

21. Learned advocate of Party I argued that even assuming that the Party I has abandoned his service, it was necessary for the Party II to hold inquiry against the Party I. Nothing such has been done by the Party II. Therefore, according to him, it will have to be held that the Party II failed to establish abandonment of service and as such, it is the termination of service of Party I. In support of his argument, he relied upon decision given by the Hon'ble High Court of Bombay in case of *Mahamadsha Ganishah Patel & another, Petitioner v/s Mastanbaug Consumer's Co-op. Wholesale & Retail Stores, Respondent, reported in 1998 1 CLR 1205*. In this reported case, the employee was on leave for a month. He did not report for duty on expiry of leave. He reported for duty about a month thereafter. The employer did not allow him to join duty. On a complaint of unfair labour practice, the Labour Court directed reinstatement with full back wages except for six months as complaint was filed belatedly. Industrial Court confirmed the order of reinstatement, but directed 50% backwages

only. The employer and the employee filed Writ Petitions in the Hon'ble High Court of Bombay. It is held by the Hon'ble High Court of Bombay that:

"Even in case of abandonment of service, inquiry was necessary and in the absence of the same, it is held that the employer failed to establish abandonment of service and as such, there was termination of service."

22. In the Present case also, the Party II came before the Court with specific plea that the Party I has abandoned his service. Facts of the reported case referred to above are similar to that of the present one. Decision given by the Hon'ble High Court of Bombay in this reported case is squarely applicable. The Party II did not hold inquiry against the Party I in connection with abandonment of service. Therefore, and relying upon decision given by the Hon'ble High Court of Bombay, I hold that the Party II failed to establish abandonment of service and as such, there is terminating of service. I agree with argument advanced by learned advocate of the Party I. In view of this reason and above discussion, I answer the issue in the affirmative.

23. *Issue No. 3*: Learned advocate of the Party I argued that the Party II terminated service of the Party I without holding departmental against the Party I. It follows that the Party I was not given opportunity of being heard before termination of services. Therefore, termination of service of the Party I will have to be treated as illegal and unjustified. To substantiate his argument, he relied upon decisions given by the Hon'ble Supreme Court in the case of *D. K. Yadav Petitioner v/s J. M. A. Industries Ltd., Respondent reported in 1993 II CLR 116* which is already referred to above. In this reported case, the appellant who was in employment of the respondent was willfully absent from duty continuously for more than 8 days without leave or prior information or intimation or previous permission from management, and therefore, it was deemed that the appellant has left the services of the company on the his own account and lost his lean and the appointment. His service came to be termination without notice under standing order clause 13(2)(iv). Before termination of his service, he was not given opportunity of hearing. The Hon'ble Supreme Court held that the principles of natural justice must be read into the standing order No. 13(2)(iv) and when so read, the impugned action is violation of the principles of natural justice.

24. To counter arguments advanced by learned advocate of the Party I, learned advocate of the Party II argued that to remain absent from duty for consecutive 13 days without leave or permission of the employer i.e. of the Party II or without giving intimation, or information to the Party II is a misconduct as per clause L-2-12 of the standing orders applicable to the parties. Even if departmental inquiry is not held for misconduct

against the Party I, it is open for the Party II to establish misconduct on part of the Party I by leading evidence before the Industrial Tribunal. Therefore, according to him, it will not be correct to hold that only because the Party II did not hold inquiry against the Party I before termination of service, the termination is illegal and unjustified. He relied upon decision given by the Hon'ble Supreme Court in case of *Workmen of F. T. & R. Co. v/s The Management*, reported in 1973 Lab. I. C. page 851. Relevant portion of decision given by the Division Bench of the Hon'ble Supreme Court in this reported case and which is relied upon by learned advocate of the Party II runs as follows:

"the mere fact that no enquiry or defective enquiry has been held by the employer does not by itself render the dismissal of workman illegal. The right of the employer to adduce evidence justifying his action for the first time in such a case is not taken away by the proviso to S.11-A. Legal position as existing prior to coming into force of S. 11-A and changes effected thereby explained.

25. It appears from facts of this reported case that the Labour Court Bombay in reference No. 268/1970 held that Section 11-A applied even to all proceedings pending adjudication as on 15-12-1971 as it only deals with matters of procedure. The said Court further held that the new section makes it clear that there must be a proper inquiry by an employer before dismissing or discharging a workman and that, if no inquiry has been held or if the inquiry held is found to be defective, there is no option but to reinstate the employee. In this view, the Labour Court further held that an employer under those circumstances has no right to adduce evidence in the adjudication proceedings to justify his action. In other reference also, the same Labour Court had expressed similar views in its order dated June, 27, 1972. Against all these three orders, the company filed appeals before the Hon'ble Supreme Court. Relying upon decision from this reported case, it can safely be said that the employer has a right to adduce evidence justifying his action for the first time in such case before the Court.

26. In the present case also admittedly, the Party II did not hold inquiry against the Party I in respect of his unauthorized absence from duty, before terminating his service. It is pleaded by Party II in No. 14 of its written statement (Exb. 4) that to remain absent from duties without intimation is not a misconduct under certified standing orders applicable to the parties. When this is the position, in my view, question of holding departmental inquiry against the Party I before termination of his service does not arise. This fact is lost sight of by learned advocate of the Party II. Though the question of holding departmental inquiry against the Party I does not arise, it was necessary for the Party II to give opportunity to the Party I of being heard as to why his services should not be terminated, before

the Party II terminated his services. The Party II did not give such an opportunity to the Party I. Therefore, and relying upon decision given by the Hon'ble Supreme Court in reported case of *D. K. Yadav v/s J. M. A. Industries* referred to earlier, I hold that the termination of services of Party I is violative of the principles of natural justice and as such, the same is illegal and justified.

27. The Party II was working on the project of construction of new Mandovi Bridge when his services came to be terminated. Construction of the new Mandovi Bridge was completed by the end of June, 1992. It reveals that termination of service of Party I is on account of closure of the project. Therefore, provisions contained in Sec. 25(FFF) of the said Act, 1947 will come into picture. Relevant portion of this section which provides for compensation to workman in case of closing down of undertaking lays down that:

Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 15-F, as if the workman has been retrenched.

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of Section 25-F, shall not exceed his average pay for three months.

28. The Party I had been in continuous service for not less than one year in undertaking of the Party II immediately before such closure. The Party II did not comply with provisions contained in Section 25-F(2) of the said Act, 1947, before his services came to be terminated by the Party II. I therefore, hold that termination of his service is illegal and unjustified.

29. The Hon'ble High Court of Bombay held in case of *Gangaram K. Medhekar, Petitioner v/s Zenith Safe Manufacturing Co. & Ors., Respondents* reported in 1996-I CLR 172, referred to above that:

"In cases of voluntary abandonment of service, it is a matter of intention. It is a matter of inference being drawn on given set of facts. The employer unilaterally cannot say that the workman is not interested in employment and it is for this reason that a domestic inquiry is required to be held."

30. The Hon'ble High Court of Bombay held in case of *Mahamadsha Ganishah Patel & another Petitioner v/s Mastanbaug Consumer's Co-op. Wholesale & Retail Stores, Respondent*, reported in 1998 1 CLR 1205 referred to above that even in case of abandonment of service, an inquiry was necessary.

31. In case of Ruhul Bhutalia petitioner v/s State Bank of India, reported in 1995 1 CRL 742, the petitioner was deemed to have voluntarily abandoned and resigned from service by overstaying his leave and remaining absent unauthorisedly. He had communicated reasons for his absence. As per relevant rules, such conduct was treated as misconduct. Framing of charge and holding of inquired. Hon'ble High Court of Delhi held that:

"assuming that it was not misconduct, abandonment or deemed resignation being question of intention, opportunity was required to be given in keeping with principles of natural justice."

32. Decisions from the reported cases referred to above speak in one chorus that even in case of abandonment of service, opportunity is required to be given to the employee before termination of his service. In the present case, as stated earlier, the Party II did not give such opportunity to the Party I. On this count also, I hold that termination of service of the Party I is not legal and not justified. My answer to the issue is in negative.

33. *Issue No. 4 :-* The Party II by way of raising preliminary objection in its written statement (Exb. 4) challenged jurisdiction of this Industrial Tribunal to try and to decide the present reference on the ground that it is not the case of termination of service, but it is a case of abandonment of service and therefore, there is no industrial dispute between the parties. The ground is raised only for the sake of ground. It is proved that it is a case of termination of service and that there is industrial dispute between parties within meaning of Section 2(s) of the said Act, 1947. Therefore, and in view of order dated 7-9-95, whereunder the Government has referred the dispute to this Industrial Tribunal for adjudication, I hold that, this Industrial Tribunal has jurisdiction to try and to decide the present reference. My answer to the issue is in affirmative.

34. *Issue No. 5 :-* Learned advocate of the Party I argued that the termination of service of Party I by Party II is illegal and unjustified. Therefore, in view of provisions contained in Section 11-A of the said Act, 1947, the Party I is entitled to reinstatement in service with full backwages and continuity in service. As against this, learned advocate of the Party II argued that, since the establishment of the Party II is closed, the Party I is entitled only to the compensation as provided under Section 25(FFF) of the said Act, 1947. He relied upon decisions from reported cases which I am going to refer.

35. The Hon'ble Supreme Court held in case of *Hindustan Steel Works Construction Ltd., etc. etc. Appellant v/s Hindustan Steel Works Construction Ltd., Employees Union, Hyderabad and another etc. etc. respondents, Reported in AIR 1995 SC 1163* that:

"In the case of a construction company which undertakes construction works wherever awarded does that work and winds up its establishment there and particularly where a number of local persons have to be and are appointed for the purpose of a particular work, mere unity of ownership management and control are not of much significance. The conclusion is inevitable that the units at one place were distinct establishments. Once this is so, workmen of the said unit had no right to demand absorption in other units on the particular units completing there job, In such a case the fact that the management reserved to itself the liberty of transferring the employees from one place to another did not mean that all the units of the appellant constituted one single establishment."

36. The Hon'ble Supreme Court held in case of *Management of Dandakaranya Project, Koreput, Appellant v/s Workmen through Rehabilitation Employees Union and other, Respondents, reported in AIR 1997 SC 852* that under the Industrial Disputes Act, if an industry is closed, the employees thereof are entitled to compensation as provided under Sec. 25(FFF) of the Industrial Disputes Act.

37. The Hon'ble Supreme Court held in case of *Maruti Udyog Ltd., appellant v/s Ramlal & Others respondents reported in (2005) 2 SCC 638* that once a valid transfer or a closure comes into effect, the relationship of the employer and employee does not survive and ceases to exist, and that, compensation is required to be paid to the workman as a consequence therefore and for no other purpose.

38. It has come in evidence of Party I that the Party II is undertaking construction work of bridges all over India. The witness J. K. Pant who is examined on behalf of the Party II, disclosed in his cross examination that after the month of June, 1992 the Party II is not doing construction work in the State of Goa. When the Party I is claiming reinstatement in service of the Party II, it is his bounden duty to show that, establishment of the Party II where he was working is in existence. It is not in dispute that project of Mandovi Bridge where the Party I was working, is over and closed in the month of June, 1992. Even assuming that the Party II is undertaking construction work of bridges all over India, mere unity of ownership, management and control are not of much significance. There is no evidence particularly on behalf of the Party I to show that all units, if any, of the Party II, situated all over India are not distinct from each other. Possibility that the Party I being local person was employed by the Party II for purpose of the particular work i.e. the project of Mandovi Bridge, as pointed out by learned advocate of the Party II, cannot be overruled. In view of this position, above discussion and relying upon decisions given by the Hon'ble Supreme Court in cases of *Hindustan Steel Works*

Construction Ltd., etc. etc. Management of Dandakaranya Project, Koreput, and Maruti Udyog Ltd., referred to above, no other best possible conclusion can be drawn that to hold that the Party I is not entitled to reinstatement with continuity in service but only to compensation provided under Sec. 25(FFF) of the said Act, 1947.

39. The Party I is retrenched after closure of undertaking of the Party II and which was the project of the Mandovi Bridge. He was in service of the Party II from the month of April, 1987 till the month of June, 1992 which is apparently for not less than one year. He was not served with notice before his retrenchment from service. As per provisions contained in Sec. 25-F referred to in Sec. 25-FFF of the said Act, he is entitled to wages for the period of notice and to retrenchment compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. His service during the period from April, 1987 till the month of December, 1991 comes to be of four years and nine months. His services in the year 1992 is not in excess of six months. He is entitled to retrenchment compensation equivalent to 15 day's average pay for every completed year for the period from April, 1987 to the month of December, 1991.

40. The Party I was appointed on monthly salary of Rs. 750/- per month. Though subsequently he was put on daily wages @ 25/-, with liberal approach I taken his salary @ Rs. 750/- p.m. for computation of wages in lieu of the notice and for retrenchment compensation. Wages for the period of notice i.e. for the period of one month, come to Rs. 750/-. Retrenchment compensation equivalent to 15 day's average pay for

the year 1987 and for each of the years 1988 to 1991 come to Rs. 1,875/-. If this amount is added in the wages, Rs. 750/- which are for the period of notice, total comes to Rs. 2,625/-. I, therefore, hold that the Party I is entitled only to the total compensation amounting to Rs. 2,625/- as per provisions contained in Sec. 25-FFF of the said Act, 1947. I answer the issue accordingly.

As a result of the finding given to issue Nos. 3 and 5, I proceed to adjudicate the disputes by passing order as follows:-

ORDER

1. It is hereby adjudicated that the action of the management M/s. U. P. State Bridge Corporation Ltd., Panaji Goa, in terminating the services of Shri V. H. Fernandes, Typist, w.e.f. 6-7-1996 is not legal and justified.
2. It is hereby adjudicated that the Party I/Workman is entitled to total compensation amounting to Rs. 2,625/- (Rupees two thousand Six hundred twenty five only) as per provision contained in Sec. 25-FFF of the said Act, 1947.
3. No order as to cost.
5. The award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.